by the large number of side issues with respect to the veracity of witnesses. The cogency of these objections has determined the issue in all but a very few jurisdictions. *Gertz* v. *Fitchburg R. Co.*, 137 Mass. 77, 78; *Farr* v. *Thompson*, Cheves (S. C.) 37; *Louisville & N. R. Co.* v. *M'Clish*, 115 Fed. 268; *Texas & P. R. Co.* v. *Raney*, 86 Tex. 363; *Jacobs* v. *State*, 42 Tex. Cr. 353. [A very recent Texas decision in a civil action is in accord with the principal case. *Davis* v. *Hudson*, 135 S. W. 1107. The earlier Texas view, however, is with the general rule; and since the later case was not in the court of last resort, nor the point discussed, its weight would appear to be negligible.] But in at least one jurisdiction following the general rule the courts have permitted exceptions under special circumstances. *State* v. *DeWolf*, 8 Conn. 92; *Merriam* v. *Hartford & N. H. R. Co.*, 20 Conn. 354. And perhaps with perfect consistency with the spirit and reasons for the rule, an exception might be made where the accused in a criminal trial is a witness in his own behalf. When the crime charged involves any moral turpitude the very fact that the accused is being tried for such a crime involves a direct and serious attack upon his credibility as a witness, and evidence of his reputation for veracity might properly be admissible. But see *Spurr* v. *U. S.*, 87 Fed. 701, 713, *contra*.

EVIDENCE—RES GESTAE.—In a trial for murder the statement by the deceased that "a stranger shot (him)," made in reply to a question by a police official, was admitted in evidence. It appeared that the statement was made immediately after the deceased recovered his speech, although about thirty minutes had elapsed since the shooting. Upon appeal, it was *held* admissible as part of the *res gestae*. *Commonwealth* v. *Puntario* (Penn., 1922), 115 Atl. 831.

The instant case is supposed to be representative of an exception to the hearsay rule which Mr. Wigmore confesses to approach "with a feeling akin to despair." 3 WIGMORE ON EV., § 1745. That courts style such statements *res gestae* is not especially illuminating. The use of this phrase is apt to lead to confusion with the Verbal Act doctrine under which extra-judicial statements are admissible to explain or give color to otherwise equivocal acts which they accompany, and so-called spontaneous statements which get their probative value from the fact that the declarant is under some nervous shock and has very slight opportunity for fabrication. As to how nearly contemporaneous with the transaction to which it refers the statement must be no rule can be given. *Kennedy* v. *R. Co.*, 130 N. Y. 654. Very much must be left to the discretion of the trial court. *State* v. *Ah Loi*, 5 Nev. 101. That the declarant has been without the power of articulation in the meantime, as in the principal case, has often been deemed important. *Lewis* v. *State*, 29 Tex. A. 201 (one and a half hours); *Eby* v. *Ins. Co.*, 258 Pa. 525 (fifteen minutes or more). The reason for this is not altogether obvious, for inability to speak is apt to encourage premeditated rather than spontaneous statements after speech is regained. What the law distrusts is not after-speech but after-thought. *Ins. Co.* v. *Sheppard*, 85 Ga. 751; *Green* v.

State, 154 Ind. 655. It is submitted that the statement in the instant case cannot be brought within the Verbal Act doctrine because the transaction to which it referred was completed and unequivocal; nor can it properly be treated as a spontaneous statement, because it appears to have been a deliberate answer to a question after the lapse of considerable time. However, some of the authorities already cited support the decision. For an extensive note on the subject see 42 L. R. A. (n. s.) 198.

FALSE IMPRISONMENT—CONSENT AS A DEFENSE.—Defendants with others went to the house where the plaintiff was staying and forcibly entered. The plaintiff resisted at first, but was induced to go with the defendants, by whom he was taken to the state line. He was there assaulted. In an action for assault and battery and false imprisonment the court instructed the jury that the plaintiff could not recover for anything done prior to the assault, on the theory that the plaintiff had consented to everything done before that time. *Held,* the instruction was erroneous. *Meints* v. *Huntington,* 276 Fed. 245.

The instruction was held to be erroneous not only because based on a conclusion of fact, the determination of which should have been left to the jury, but also because it was an inaccurate statement of the law. It was held to be inaccurate on the theory that consent is no defense to an action for false imprisonment. The only cases cited to sustain this position were cases of assault and battery. As a general rule, in an action for assault and battery, if what is done amounts to a breach of the peace or is forbidden on public grounds, consent is no defense. *Stout* v. *Wren,* 8 N. C. 420; *Shay* v. *Thompson,* 59 Wis. 540; *Morris* v. *Miller,* 20 L. R. A. (n. s.), 907, note. It may, however, be shown in mitigation of damages. *Barholt* v. *Wright,* 45 Ohio St. 177. The theory is that the state is involved and there can be no defense based on a breach of the law. COOLEY ON TORTS (Ed. 2) 188. For a criticism of this rule and the reasons underlying it with respect to cases of mutual combat, see *Galbraith* v. *Fleming,* 60 Mich. 403; *Smith* v. *Simon,* 69 Mich. 481; *Lykins* v. *Hamrick,* 144 Ky. 80. Conceding the soundness of the rule, it is of doubtful application in a case of false imprisonment, since the gist of the action is the detention of the plaintiff without his consent, and there is no legal wrong unless the detention was involuntary in the sense of being contrary to the will of the plaintiff. Consent given before the alleged detention took place was held to be a defense in the following cases: *Moses* v. *Dubois* (S. C.), Dudley 209; *Houston & T. C. R. Co.* v. *Roberson,* 138 S. W. 822; *Ellis* v. *Cleveland,* 54 Vt. 437. The result reached in the principal case is the correct one, but may be more properly based upon a proposition to which all authorities will agree, namely, that a detention sufficient to support an action for false imprisonment may arise despite submission if the circumstances are such as to induce an apprehension that force will be used. There is no obligation to incur the risk of personal violence by resisting until actual violence is used. *Comer* v. *Knowles,* 17 Kan. 436; *Pike* v. *Hanson,* 9 N. H. 491. That the court in the